

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	ATTY'S DKT: CLASSEN=6A
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John Barthelow CLASSEN)	
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Appln. No.: 10/081,705)	
)	Washington, D.C.
Filed: February 21, 2002)	
)	October 25, 2010
For: COMPUTER ALGORITHMS AND)	
METHODS OF PRODUCT SAFETY)	

DECLARATION OF JAMES L. GANNON II

I, James L. Gannon II, declare as follows:

1. I was employed by Montgomery, McCracken, Walker & Rhoads, LLP, from September 15, 2008 until September 30, 2009, as a paralegal. I have been employed by Montgomery, McCracken, Walker & Rhoads, LLP as an associate since October 1, 2009.

2. I am a registered practitioner with the U.S. Patent and Trademark Office (USPTO) since April 2008, Registration Number 62,177, and a member of the bar of the Commonwealth of Pennsylvania, since October 2007.

3. As part of my duties as a paralegal, I was occasionally asked to confirm dates, facts, and procedural details associated with the filing of responses to various USPTO Office Actions.

4. On September 27, 2008, I was informed in an email from Evelyn McConathy that the papers filed on August 1, 2008, in connection with the above-identified application were not showing up in PAIR. Exhibit C.

5. On September 29, 2008, to the best of my recollection, I consulted the MPEP regarding the procedure for the subsequent establishment of a filing date when the USPTO has no record of receipt of the filing.

6. I reviewed 37 C.F.R. §1.8, taking note of both 37 C.F.R. §1.8(b), which provided for the resubmission of papers, as well as 37 C.F.R. §1.8(c), which indicated that the USPTO could also require additional evidence to determine if the correspondence was timely filed. I then placed a series of telephone calls to the USPTO to determine if the filing appeared on their internal system, and if not, what documents, including the additional evidence referenced in 37 C.F.R. §1.8(c), would be required to establish the earlier filing date.

7. I called Examiner Etienne LeRoux and his supervisor, Apu Mofiz, and left messages for them both. Mr. Mofiz returned my call later that day.

8. I informed Mr. Mofiz that we had filed papers on August 1, 2008, that were not showing up in PAIR.

9. Mr. Mofiz said that they were not in the system and that he could not say whether or not they were received by the PTO.

10. Mr. Mofiz then indicated that, because the response was filed via the United States Postal Service, the USPTO would require a stamped, return postcard to subsequently establish receipt of the filing. I told Mr. Mofiz that we did not have such a postcard in our possession. Mr. Mofiz then informed me that, lacking such proof, we that should wait to see if the filing would eventually appear in PAIR.

11. I inquired about the possibility of withdrawing the Appeal to have the Declarations admitted. Mr. Mofiz indicated that a Request for Continued Examination (RCE)

would remove the case from Appeal and once again place it in prosecution, allowing for entry of the Declarations. However, Mr. Mofiz suggested that I contact the Board of Patent Appeals and Interferences to confirm this fact.

12. I then called the Board of Patent Appeals and Interferences, where I was referred to Vasco Harper, a paralegal. Mr. Harper and I discussed the filing of an RCE, and Mr. Harper also indicated that the filing of an RCE would suffice to remove the Appeal and once again place the application in prosecution, allowing for entry of the Declarations.

13. On September 30, 2008, I reviewed the MPEP regarding the procedures for filing an RCE and the effect this would have on a currently pending Appeal. Additionally, I placed a telephone call to the main switchboard of the USPTO, and to the best of my recollection, I was connected to the Board of Patent Appeals and Interferences, though I am unable to recall the individual with whom I spoke. Our telephone records show only a general Patent Office Exchange number. The purpose of this call was to confirm the substantive effect of filing of an RCE, and how my own interpretation of the MPEP was in agreement with the opinions of Mr. Mofiz and Mr. Harper.

14. On October 1, 2008, I placed a telephone call to the USPTO and was referred to Stan Miller of the Inventor's Assistance Center, where, to the best of my recollection, I confirmed my understanding of the procedural requirements for the filing of an RCE.

15. As part of my standard practice, I would have provided rolling reports to Evelyn McConathy after having spoken with the USPTO. As such, I would have provided Mrs. McConathy with rolling reports on at least September 29th, September 30th, and October 1st, 2008, regarding the information provided to me by the USPTO on each respective day.

16. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Dated: October 25, 2010


James L. Gannon II